

LESSON 3

DURATION OF CLASSIFICATION



Now that you have learned how information becomes classified, we can turn to how long it stays classified - the duration of classification. When classified information loses sensitivity over time, the restrictions on access to it - and the costs of protecting it - may be reduced or eliminated. We'll go over the factors that determine when and how information is reduced to a lower classification (downgrading) or ceases to be classified at all (declassification). At the end of this lesson, you will be able to do the following:

- State the basic policy of E.O. 12958, as amended, concerning duration of classification.
- Identify downgrading and declassification authorities.
- Distinguish downgrading from declassification.
- Describe the two types of downgrading.
- List an OCA's declassification options.
- Distinguish the declassification methods.
- Interpret downgrading and declassification instructions.
- Describe how information classified prior to E.O. 12958, as amended is declassified.
- Describe how changes to duration are handled.
- Identify how the transfer of information affects its declassification.

Duration Policy of E.O. 12958, as amended

"Hello! Welcome to the afternoon session of our one-day class. For those of you I haven't met, I'm Mike Carson with the DIVA Security Office.

"I hope you remember from this morning that one of the last things an OCA does in the original classification process is to make a decision about the *duration* of the classification. In this session we'll take a closer look at duration.

"I hope you also remember the basic classification policy of E.O. 12958, as amended, because half of it has a direct impact on duration. Who remembers the policy?"

"Well," responds Alice Connors, "I believe ...

The basic classification policy of E.O. 12958, as amended, is...

•Information will be classified when necessary to prevent damage to the national security, but only when necessary.

•information will remain classified as long as necessary, but no longer than 25 years.

"That's right, Alice. The second statement gives us the duration guidance. Once disclosure of the information no longer puts our national security at risk, the information shouldn't remain classified. I'm sure you remember that E.O. *12958, as amended promotes declassification and public access to information as soon as national security considerations permit.*"

Declassification and Downgrading Authority -----

"Let's first identify the people in the DoD who have *declassification and downgrading authority*. They are...

Declassification and Downgrading Authorities in DoD

- * **The Secretary of Defense**
- * **The Secretaries of the Military Departments**
- * **The original OCA or that OCA's successor**
- * **Other designated officials who can exercise declassification and downgrading authority over classified information in their functional areas of interest**

Downgrading vs. Declassification -----

"All right, now let's see how an assigned classification may be ended. There are two ways: through *downgrading* and *declassification*. Does anyone know what downgrading is?"

Sparky Chang spoke up. "I think that ...

Downgrading is *lowering* the classification from one level to another.

TOP SECRET information may become SECRET or CONFIDENTIAL. SECRET information may become CONFIDENTIAL.



"That's right, Sparky. Notice that Sparky used the word 'lowering.' That's a key word. With downgrading the level of classification is lowered, not eliminated. When information is downgraded, it *remains classified*."

"Now let's define declassification. Sparky, you did such a good job defining downgrading, how about trying this one?"

"Sure, I'll take a stab at it."

Declassification is a determination that classified information no longer requires protection in the interest of national security.



Rudy Tucker

"Two for two! When information no longer requires protection in the interest of national security, it no longer needs to be classified. Classification is *eliminated*."

"So what you're saying," Rudy Tucker says, "is that when information is declassified, it's no longer identified as 'Top Secret,' 'Secret,' or Confidential.' But if information is downgraded, it still carries a classification designation."

"That's right, Rudy. And that's a good way to summarize the difference between the two terms."

Downgrading

"We said that downgrading means lowering the classification from one level to another. How does an OCA *communicate downgrading instructions* to holders of classified information? Well, on classified documents or materials..."

Downgrading instructions usually appear as:

"Downgrade to (level) on (date or event)"



Josh Smith

"Note that an OCA can specify a *date* or *event* for downgrading in the process of original classification. Now, using this format, can anyone give us sample downgrading instructions?"

Josh Smith says, "Sure. Let's say it's December 1, 2003. An OCA classifies some information Secret. At the same time, the OCA determines that the information can be downgraded to Confidential in two years. So the downgrading instructions are 'Downgrade to Confidential on December 1, 2005.'"

Automatic Downgrading-----

"Josh says that an OCA determined that some information should be downgraded to Confidential on December 1, 2005. Come December 1, 2005, the information is downgraded. This is called *automatic downgrading*. When information is downgraded in accordance with originally determined downgrading instructions, the OCA *does not have to notify holders of the information*. The markings themselves take care of that."

Downgrading Upon Reconsideration-----

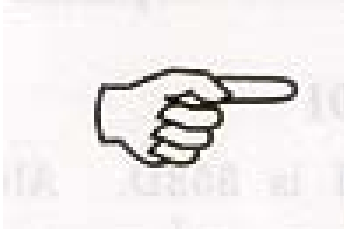
"Suppose an OCA classifies some information as Secret and *doesn't assign any downgrading instructions* to it," Josh says. "Then, *at a later date*, the OCA reviews the information and figures that it can be downgraded to Confidential. What happens?"

"Good question, Josh. We call the situation you described *downgrading upon reconsideration*. The OCA can issue the downgrading instructions but *must notify all known holders of the information*."

AUTOMATIC DOWNGRADING vs. DOWNGRADING UPON RECONSIDERATION		
TYPE	EXPLANATION	NOTIFICATION REQUIRED?
Automatic	OCA issues downgrading instructions at the time information is originally classified. These original instructions are carried out.	No
Upon Reconsideration	OCA does not issue downgrading instructions at the time information is originally classified. Downgrading instructions are issued at a later time.	Yes

Declassification

"Wally told you that when information is originally classified, an OCA must determine when that information will be declassified," Mike says. "Well, there are exceptions to that rule. For instance,



Declassification instructions are not applied to *Restricted Data* and *Formerly Restricted Data*. The *Department of Energy* determines when *Restricted Data* will be declassified. Declassification of *Formerly Restricted Data* takes a joint determination by *DOE* and *DoD*.

"So if I pick up a document that contains *Restricted Data*, I won't see any declassification instructions on the front of the document?" asks Peg Brown.

"That's right, Peg. And while we're on the subject, let me show you how declassification instructions appear on the front of a document."

Declassification instructions usually appear as:

"Declassify on: (option)."

"What do you mean by 'option'?" Peg asks.

"When OCAs determine declassification instructions, they base their decisions on predictions about *loss of the information's sensitivity*."

An OCA's declassification options are:

- * **A specific date within 10 years**
- * **A specific event likely to occur within 10 years**
- * **10 years from the date of classification**
- * **A specific date greater than 10 years not to exceed 25 from the date of classification.**

"This means that declassification instructions on a document that was created on 12 June 2004 could appear as:

- Declassify on: April 12, 2007 (specific date)
- Declassify on: Completion of operational testing (event)
- Declassify on: June 12, 2017 (10 years from the date of classification)
- Declassify on: June 12, 2029

"Mike, I understand about determining a date or event for declassification. But could you explain a bit more about this 10 years versus 25 years stuff " Pegs asks.



"Sure, Peg. We hope that much of the time OCAs will be able to set specific dates or events for declassification. But we know that there will be a lot of cases where they just can't predict the future well enough to do that. And there will be a good bit of information that will still be sensitive even after ten years have passed. That's why the Executive Order has a provision for OCAs to assign classification for up to 25 years.

Methods of Declassification

"There are five ways that information ends up being declassified," Mike says.

Methods of Declassification

- * **Scheduled**
- * **Automatic**
- * **Re-evaluation**
- * **Systematic Review**
- * **Mandatory Review**

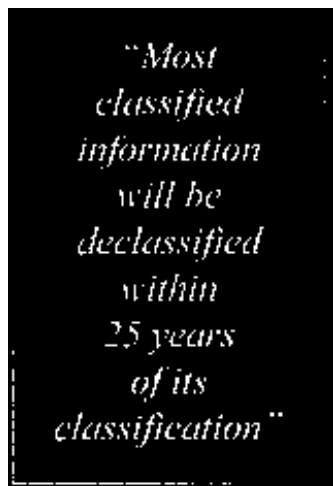
Scheduled-----



"Scheduled declassification occurs if, at the time the information is originally classified, the OCA is able to set a date or event for declassification. The information is then scheduled to be declassified on that date or when the event occurs. How about an example?"

"Sure," says Sparky. "On January 15, 2004, an OCA determines that information is to be declassified on January 15, 2008. Four years pass and on January 15, 2008, the information is declassified. Simple."

Automatic-----



'25-year rule'

"Right. Now the second way the information is declassified is *automatic declassification*. The Order sets up a system to declassify information in *permanently valuable records* when the records become *25 years old*."

"Permanently valuable records are defined by law -*the Federal Records Management Act*. Our records management folks are responsible for identifying those records here at DIVA."

"The important thing about this '25-year rule' is that it is *automatic*. Permanently valuable records are automatically declassified when they become 25 years old, *unless* an *agency head* designates them to be kept classified more than 25 years. In the whole Department of Defense, there are *only four agency heads*: the Secretary of Defense and the Secretaries of the Army, Navy, and Air Force. Four people! So

you can see that the intent of the Executive Order is that *most classified information will be declassified within 25 years of its classification.*"

"Wait a minute!" Eddie Cramer breaks in. "Isn't there a danger that we'll declassify something 25 years old that should still *stay classified*? Couldn't something slip through the cracks of this exempting business?"

"There is that possibility, Eddie. In fact, it's bound to happen sooner or later. But the decision to set up the 25 year rule was based on an idea called *risk management*. The President's decision, as implemented in the Executive Order, was that the risk of something slipping through the cracks at 25 years was an acceptable one, when balanced against the benefits of getting those masses of old information declassified. And 25 years is a long time. Heck, Eddie, some of the people in this room weren't even born 25 years ago!

"While we're on the subject of this 25-year, automatic declassification, let me explain how an exemption would look on the 'Declassify on' line of a document. *Documents exempted by an agency head from the 25-year rule will be marked, '25X,' plus a brief reference to the pertinent exemption category(ies) or the number(s) that corresponds to the category(ies) in section 3.3(b) of the Order.*"



"The numbers after the 25X's show the *category of exemption* the information falls in. Yes, there's a list of categories eligible for exemption from the 25-year rule, too!

But let's not worry about the 25-year exemption categories now. They're in the regulation if you need to look them up.

"The other thing you'll see on material marked with a '25X' is a *declassification date*. When an agency head exempts records from the 25-year rule, he or she has to set a declassification date or event for the records. There's one exception: information about *human intelligence sources* or *confidential human sources* doesn't have to have the date assigned. So you'll see some '25X' material without a declassification date. It will be marked '25X1-human.'"

"All right, review time! So far, we've looked at ...

Scheduled declassification:

The original classifier sets a date or event within 10 years for declassification, or sets a date 10 years from the date of the decision. If the information must remain classified for more than 10 years then the OCA will apply a date not to exceed 25 years. If a date or event is set, the information is declassified at that time.

Automatic declassification:

Information in permanently valuable records which is still classified after 25 years is automatically declassified on the 25th anniversary of its classification unless an agency head exempts it from the 25-year rule.

Re-evaluation-----



Original Classification Authority

"It's possible that changes in circumstances may remove the need for a piece of information to be classified. Suppose classified information is *compromised*. An OCA, or the OCA's successor, is responsible for re-evaluating the information to see if it should be declassified.

"Perhaps the classified information becomes *obsolete*. For example, suppose an OCA determined that the fact Weapon ABC doesn't work well in the rain should be classified Secret. As the system evolves, changes are made and it works just fine in the rain. Upon re-evaluation, the OCA should declassify the piece of information.

Systematic Review-----

"Information generated within DoD and declared permanently valuable is provided to the *National Archives and Records Administration (NARA)*. Some permanently valuable information is classified. So we have a program called '*systematic review for declassification*.' Under this program classified, permanently valuable records are reviewed for declassification after they reach a specific age.

"DoD Components have systematic review programs too. Sometimes, these are focused on specific types of information - like records from the Gulf War."

"I've got a question," Josh says. "If the DoD provides information to the NARA, shouldn't the DoD be involved in its declassification?"

"The DoD is involved, Josh. Information provided by DoD will be reviewed *according to guidelines provided by DoD*. If declassification is questionable, the DoD Component that has classification jurisdiction over the information is asked to make a decision about declassifying."

Mandatory Review-----



request for mandatory review
for declassification

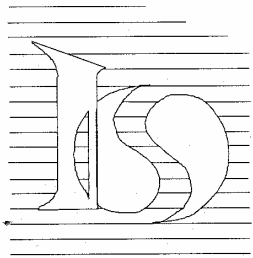
"The fifth method of declassification is *mandatory review*. Let's suppose we're all working on a classified project. We'll call it 'Project Wingo.' Project Wingo concerns the computer system of the future. While it's no secret that Project Wingo exists, no one really knows much about it since most of the information is classified.

"So we're all working on the project. Then one day, we get a letter from Mr. John Q. Public of Ames, Iowa. Mr. Public wants some information concerning Project Wingo. He knows that the information in a specific document he wants is classified. But he wants DIVA to review the information to see if it can be declassified and made available to the public.

"Mr. Public has made a *request for mandatory review for declassification*. When such a request is made the originating agency *must* respond to it in a timely manner."

Request for Mandatory Declassification Review

- ***Anyone can request an originating agency to review specific information for declassification.***
- ***The originating agency must either make a prompt declassification determination and notify the requester accordingly, or inform the requester of the additional time needed to process the request (ordinarily within one year of receipt of the request).***



Information Security
Oversight Office

"How often does the DoD grant a request for declassification made under mandatory review?" asks Alice.

"Well, according to the Information Security Oversight Office's 2001 *Annual Report to the President*, in Fiscal Year 2001, the Executive Branch acted upon 3,275 cases processed under mandatory review requests. As a result, 58,508 pages of information were declassified, 73,889 pages of information were declassified in part, and 16,251 pages of information remained classified in full."

"What happens if a request for information is only partially granted or denied in full?" Josh asks.

"The originating agency must provide *a brief explanation to the requester* of why the information cannot be granted in full or at all. The requester *can appeal* the decision to the Interagency Security Classification Appeals Panel (ISCAP)."



"Is all classified information eligible for mandatory declassification review?" Josh asks.

"No, Josh. Certain high-level information is exempt from it."

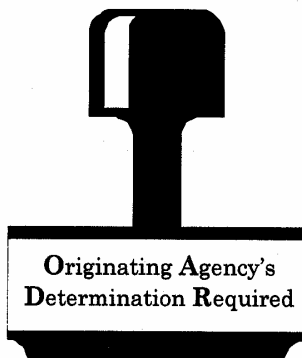
Information Exempt from Mandatory Declassification Review
Information originated by the incumbent President or, in the performance of executive duties, the incumbent Vice President; the incumbent President's White House staff, or, in the performance of executive duties, the incumbent Vice President's Staff; committees commissions or boards appointed by the incumbent President; or others specifically providing advice and counsel to the incumbent President or acting on behalf of the incumbent President is *exempt* from mandatory review for declassification.

Foreign Government Information

"Now that we've looked at the five methods of declassification, let's turn to the declassification of *foreign government information*. Some of you may be involved in working with classified documents that contain classified foreign government information.

"The declassifying agency is the agency that initially received or classified the information. When foreign government information is being considered for declassification or appears to be subject to automatic declassification, the declassifying agency determines whether the information is subject to a treaty or international agreement that would prevent its declassification at that time."

Information Classified Prior to E.O. 12958, as amended



"So far we've talked about information classified under E.O. 12958, as amended. It became effective on March 25, 2003. What about information that was classified *before March 25, 2003*? How is it declassified? It's pretty simple. If there's a *date* or *event*, go by that. If there's no date or event, the 'Declassify on' line on these documents usually reads 'X1' through 'X8', Source marked OADR' or 'Declassify on: OADR.' 'OADR' is a marking authorized under a previous Executive Order and means, 'Originating Agency's Determination Required' to declassify."

Information Classified Prior to March 25, 2003

- * If the information bears a date or event for declassification, declassify the information on the date specified or *when the* event happens.
- * If the information does not have a date or event for declassification, identify the date the information was originally classified and annotate the declassification marking. For example:
 - *Declassify on: Source Marked "OADR", Date of source: October 20, 1990*
 - or*
 - *Declassify on: Source Marked "X1", Date of source: October 20, 2000*

Note the following:

- * A "Review On" date is not a declassification date. Information covered by a "Review On" marking must be treated as OADR.

Changes to Duration

"When we talked about methods of declassification, we saw that through re-evaluation and systematic and mandatory reviews, classified information may become declassified earlier than originally anticipated. Let's discuss what happens when the duration of classification changes."

Notification of Changes-----

The rule when there is a change in the original duration instructions is as follows:

If duration instructions change in any way the original classification authority must make reasonable attempts to notify all known holders.

Regrading Classified Information-----



regrading

"Suppose," Mike begins, "it is 14 April 2004 and you are working with a Secret document. You are notified that the document is to be *downgraded to Confidential* on 20 May 2004. What should you do?"

"On 20 May 2004 I'd *cross out the current classification markings and write in the new ones*," says Rudy.

"That's right. And if you were notified instead that the document was to be *upgraded to TOP SECRET* on 20 May 2004, you'd cross out the markings and write in the new ones on that date. In either case, there are a few other things you need to do. You've got to indicate what gives you the *authority* to change the classification, the *date* of the action, and your *name*. This whole process is called *regrading*."

To regrade a document, you should mark it conspicuously to show...

- **All applicable changes**
- **The authority for the action**
- **The date of the action**
- **The identity of the person taking the action**

Extending Downgrading and Declassification Instructions -----

"I understand what happens when instructions are changed so that information is downgraded or declassified *earlier* than originally anticipated," Rudy says. "But suppose an OCA determines that a particular piece of information should be declassified on 1 June 2004. As 1 June 2004 approaches, it appears that the information should not be declassified on that date, but *later on*. What happens?"

"Good question, Rudy. The original classification authority can extend the classification of information for up to but no more than 25 years from the date of origination. Prior to doing this the OCA must ensure that the information continues to meet the classification standards under the executive order and the OCA makes reasonable attempts to notify all known holders of the information."

Transferred Documents or Materials



"Information originally classified by one Federal department or agency, or DoD Component often ends up in the hands of another department, agency, or DoD Component. Sometimes the information is transferred for *official reasons*. Other times, the information is transferred for *storage* purposes. And sometimes, a department, agency, or DoD Component *ceases to exist*. The originally classified information these operations generated has to end up somewhere. Let's see how each of these situations impacts declassification."

Officially Transferred-----

"For information that is *officially transferred by directive, statute, or executive order...*

The *receiving* department agency or DoD activity *becomes the original classifying authority* over such *material for purposes of* downgrading and declassification.

"Can someone give me an example?"

"I'll try," says Peg. "How about if the folks at Andrews Air Force Base are working on a classified

project. Some people here at DIVA are involved. Someone decides that DIVA should take over the project, so all documents and materials are transferred here. DIVA is then responsible for ensuring that the classified information is downgraded or declassified."

Not Officially Transferred-----

"Great example, Peg! Of course not all information is transferred for official reasons. Sometimes a DoD Component comes into possession of classified information for 'unofficial' reasons. In such cases

Classified information that is not officially transferred, but was *originated in an agency that no longer exists* and there is no successor agency, the *Director of ISOO will designate an agency or agencies to assume responsibility* for the information.

Transfer for Storage or Retirement-----



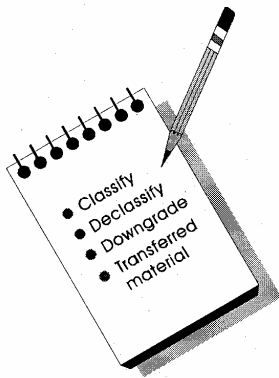
"One final word regarding transferring information. If your component is transferring classified documents or materials to a *Records Center* for storage or to the *NARA* for permanent preservation, *review* the material for downgrading or declassification *before transferring*."

"Before we wrap up, I'd like to thank each of you for attending. And best of luck at DIVA. If you need help on any security matters, please call me.

Summary



"In this session, we covered the duration of classification. We noted that most information should be classified no longer than 25 years and that it may be downgraded or declassified at any time by the OCA. Only certain DoD officials have declassification and downgrading authority. We defined downgrading as lowering the classification from one level to another. Automatic downgrading is lowering the classification level as the OCA instructed at the time of original classification. The OCA may instead downgrade upon reconsideration and issue instructions to all known holders. Declassification is a determination that classified information no longer requires protection in the interest of national security. Based on projected loss of sensitivity, the OCA may decide that the information will be declassified on a date or event within 10 years, 10 years from the date of classification, or up to 25 years from the date of classification. The Department of Energy determines when Restricted Data and Formerly Restricted Data can be declassified since that information is covered under the Atomic Energy Act.



We noted five methods of declassification. Scheduled declassification occurs upon the date or event the OCA specified at the time of classification. Permanently valuable records are automatically declassified after 25 years unless exempted by an agency head. Compromised, obsolete, or other information that may have lost its sensitivity may be declassified upon re-evaluation. Permanently valuable DoD classified information is systematically reviewed for declassification. Anyone may request a mandatory review for declassification by the originating agency. You learned that if duration instructions change in any way all known holders must be notified. Documents to be downgraded or upgraded earlier than scheduled must be regraded. For officially transferred material, the receiving element becomes the original

classifying authority for the purpose of downgrading or declassifying. For unofficially transferred material, the Director of ISOO will designate an originating agency for duration decisions. Records to be transferred for storage or preservation are first reviewed for downgrading or declassification."

REVIEW EXERCISES

1. What is the basic classification policy of E.O. 12958, as amended, concerning the duration of classification?
2. General Davis was the Director of DIVA prior to General Kent. Who has downgrading and declassification authority over the information General Davis originally classified?
3. What is the difference between downgrading and declassification?
4.
 - a. An OCA classifies some information Top Secret but does not assign downgrading instructions to the information. A year later, the OCA reviews the information and determines that it can be downgraded to Secret. This is called:_____
 - b. _____ is when classified information is downgraded in accordance with its original instructions.
5. What are an original classifier's four options for declassification?
 - a. _____
 - b. _____
 - c. _____
 - d. _____

6. Match the methods of declassification with the descriptions.

Method	Description
a. Mandatory	___1. Declassification instructions say that information should be declassified on 1 Jun 04.
b. Re-evaluation	___2. Information is compromised and it's determined that the information should be declassified.
c. Scheduled	___3. A program primarily administered by NARA.
d. Systematic	___4. Information is declassified as a result of an inquiry from an individual.
e. Automatic	___5. Review of information shows it should be declassified because it's obsolete.
	___6. A 25-year old permanently valuable record becomes declassified.

7. A classified document contains Restricted Data. What impact does this have on declassification?
8. Interpret the following declassification instructions:
- a. Declassify on: 1 August 1998
 - b. Declassify on: deployment of Company A to Saudi Arabia
 - c. Declassify on: 25X1-human
9. You are working with a classified document. It is dated July 9, 1992. It has OADR as the declassification instruction. As far as declassification is concerned, how should you treat the information in the document?

10. It's October 2, 2004. You're working with a Secret document that is to be downgraded to Confidential on September 30, 2006. You receive notice that the downgrading instructions have changed. The new downgrading instructions say "Downgrade to Confidential on September 30, 2005." What do you do?
11. Fort Carson receives a presidential directive to transfer some classified information to DIVA. Once the information is transferred, DIVA becomes its downgrading and declassification authority.
- True False

SOLUTIONS AND REFERENCES

1. The basic classification policy of E.O. 12958, as amended is information will be classified when necessary to prevent damage to the national security, but only when necessary and information will remain classified as long as necessary, but no longer than 25 years. (p.. 3-2)
2. Since General Kent is General Davis' successor, General Kent is the declassification and downgrading authority. Remember, within DoD, authority is delegated to a position, not a person. (p. 3-3)
3. In downgrading, the classification is lowered; in declassification, classification is eliminated. (pp. 3-3-4)
4.
 - a. Downgrading upon reconsideration
 - b. Automatic downgrading (pp. 3-5)
5.
 - a. A specific date within 10 years
 - b. A specific event within 10 years
 - c. 10 years from the date of classification
 - d. No more than 25 years from the date of origination (p. 3-6)
6.
 1. c
 2. b
 3. d
 4. a
 5. b
 6. e (pp. 3-8-12)
7. If a document contains Restricted Data, declassification instructions will not be placed on the document. (pp. 3-6)
8.
 - a. Declassify the information on August 1, 1998.
 - b. Declassify the information when Company A is deployed to Saudi Arabia.
 - c. The information is a permanently valuable/historical record that is exempt from the automatic declassification requirements. (pp. 3-8-10)
9. Source material OADR, Date of Source : 9 Jul 92 (p.3-13)
10. You remark it. You replace the old downgrading date with "30 Sep 05." On the front of the document you put your name as the person who made the change, the date you made the change, and a notation stating the authority that authorized the change. (p. 3-14-15)
11. True. (p. 3-16)